

UNITED STATES COURT OF APPEALS
Filed 9/19/96
FOR THE TENTH CIRCUIT

LAYNE R. MEACHAM,

Plaintiff-Appellant,

v.

ROD BETIT, Executive Director, Utah
State Department of Human Services,
Office of Licensing,

Defendant-Appellee,

and

PATRICIA C. KREHER, Director,
Office of Licensing; KEN STETTLER,
Licensing Specialist Division of
Family Services, Child Protective
Services; MARY NOONAN, Director
of Division of Family Services;
DIANE WARNER-KEARNEY,
Division of Family Services; JACK
GREEN, Director of Liability
Management,

Defendants.

No. 95-4172
(D.C. No. 95-CV-586-W)
(D. Utah)

ORDER AND JUDGMENT*

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order
(continued...)

Before PORFILIO, LOGAN, and LUCERO, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Plaintiff Layne R. Meacham appeals from the dismissal without prejudice, on abstention grounds, of his action filed under 42 U.S.C. § 1983. We have jurisdiction under 28 U.S.C. § 1291, and affirm.

Appellant raises two issues on appeal: (1) his complaint states valid claims under § 1983, and (2) previously on-going state administrative proceedings were remedial in nature, not coercive, and abstention under Younger v. Harris, 401 U.S. 37 (1971), was therefore improper. The district court did not dismiss for failure to state a claim and we therefore have no occasion to discuss that issue on appeal.

We review de novo the district court's decision to abstain from exercising jurisdiction under Younger. Phelps v. Hamilton, 59 F.3d 1058, 1063 (10th Cir.

*(...continued)

and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

1995). We affirm that decision for two reasons. First, appellant conceded that a state administrative proceeding was in progress at the time he filed his federal complaint. As a policy matter, we are concerned that appellant dismissed his request for a hearing apparently because he thought it would interfere with his § 1983 action. By this action, appellant not only made his reliance on the federal forum more imminent, but also deprived himself of an available state forum to raise his constitutional issues. In addition, we are not persuaded that the administrative proceeding was not in actuality initiated by the State. Appellant sought a hearing, yes, but his request was in response to an action already taken by the State. We therefore affirm the district court's decision to abstain from exercising federal jurisdiction when a state administrative proceeding was in progress when the federal complaint was filed.

The judgment of the United States District Court for the District of Utah is AFFIRMED.

Entered for the Court

John C. Porfilio
Circuit Judge